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EMPLOYMENT STANDARDS

regulations
and excerpts from
THE
EMPLOYMENT
STANDARDS
ACT

Alberta

LABOUR
EMPLOYMENT STANDARDS BRANCH

DDW5329388

EMPLOYMENT STANDARDS REGULATIONS AND EXCERPTS FROM THE EMPLOYMENT STANDARDS ACT

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August, 1984

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To obtain the above regulations, contact your nearest
Employment Standards Branch indicated below:

EDMONTON	#403, 10339 - 124 Street Edmonton, Alberta T5N 3W1 Ph.: 427-3731	GRANDE PRAIRIE	#3501, Provincial Building 10320 - 99 Street Grande Prairie, Alberta T8V 6J4 Ph: 538-5253
ST. PAUL	407, 5025 - 49 Avenue P.O. Box 2109 St. Paul, Alberta T0A 3A0 Ph: 645-6349	CALGARY	Deerfoot Junction, Tower 3 Rm. 3300, 1212 - 31 Ave., N.E. Calgary, Alberta T2E 7S8 Ph: 230-1993
MEDICINE HAT	#317, 770 - 6 Street, S.W. Medicine Hat, Alberta T1A 4J6 Ph.: 529-3524	EDSON	P.O. Box 1658, 5041 - 1st Ave. Grand Trunk Shopping Centre Edson, Alberta T0E 0P0 Ph: 723-3341
RED DEER	2nd Floor Provincial Building 4920 - 51 Street Red Deer, Alberta T4N 6K8 Ph: 340-5153	LETHBRIDGE	#377 Government Centre 208 - 5 Avenue, South P.O. Box 3014 Lethbridge, Alberta T1H 0H5 Ph.: 329-5447

NOTE: This legislation is subject to change without notice.
If further information is required, contact your nearest Employment Standards Office.

EMPLOYMENT STANDARDS REGULATIONS AND EXEMPTIONS FROM THE EMPLOYMENT STANDARDS ACT

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NOTE: The regulations are subject to change without notice.
If you are a business owner, please refer to the Employment Standards Act for more information.

THE EMPLOYMENT STANDARDS ACT

Exemption Regulation

Order in Council # 171/81

Regulation # 83/81

Approved and Ordered,

by F. LYNCH-STANTON,
Lieutenant Governor.

Upon the recommendation of the Honourable the Minister of Labour, the Lieutenant Governor in Council, pursuant to Section 69 of The Employment Standards Act, makes the regulation in the attached Appendix, being the Exemption Regulation.

Peter Lougheed
(Chairman)

1 In this regulation "Act" means The Employment Standards Act.

Hours of Work and Records

2 Section 14 (1) (a) and Division 2 of Part 3 of the Act do not apply to an employee who is

- (a) a barrister and solicitor or an individual articulated to a barrister and solicitor;
- (b) a chartered accountant registered as a member of the Institute of Chartered Accountants of Alberta or an individual articulated to a chartered accountant so registered;
- (c) a salesperson, other than a route salesperson, remunerated in whole or in part by commission who is engaged in soliciting orders, principally outside the place of business of his employer, for goods or services or both that will subsequently be delivered or provided to the purchaser;
- (d) an automobile, truck or bus salesperson;
- (e) a mobile home salesperson;
- (f) a farm machinery salesperson;
- (g) a heavy duty construction equipment or road construction equipment salesperson;
- (h) a residential home salesperson who is not a real estate agent licensed under The Real Estate Agents Licensing Act;
- (i) a real estate agent or real estate salesperson licensed under The Real Estate Agents Licensing Act;
- (j) a salesman registered under The Securities Act;
- (k) a salesman registered under The Investment Contracts Act;
- (l) an individual holding a certificate under section 486 of The Alberta Insurance Act;
- (m) a salesperson for a commercial agent licensed under The Licensing of Trades and Businesses Act;
- (n) a land agent licensed under The Land Agent's Licensing Act,

or to their respective employers while acting in the capacity of their employer.

Minimum Wage Exemptions

3 (1) Regulations under section 31 of the Act do not apply to an employee who is

- (a) a barrister and solicitor or an individual articulated to a barrister and solicitor;
- (b) a chartered accountant registered as a member of the Institute of Chartered Accountants of Alberta or an individual articulated to a chartered accountant so registered;
- (c) a real estate agent or real estate salesperson licensed under The Real Estate Agents Licensing Act;
- (d) a salesman registered under The Securities Act;
- (e) a salesman registered under The Investment Contracts Act;
- (f) an individual holding a certificate under section 486 of The Alberta Insurance Act;
- (g) a land agent licensed under The Land Agent's Licensing Act;
- (h) a student engaged
 - (i) in a formal course of training approved by the Director,
 - (ii) in a work experience program approved by the Minister of Education, or an individual designated by him, under section 161 of The School Act and by the Director,
 - (iii) in a work experience program approved by the Minister of Advanced Education and Manpower, or an individual or committee designated by him, and by the Director,

and to their respective employers while acting in the capacity of their employer.

Vacation and Vacation Pay Exemptions

4 Part 3, Division 4 of the Act does not apply to an employee who is

- (a) a salesperson, other than a route salesperson, remunerated in whole or in part by commission, who is engaged in soliciting orders, principally outside the place of business of his employer, for goods or services or both, which will subse-

quently be delivered or provided to the purchaser;

- (b) a real estate agent or real estate salesperson licensed under The Real Estate Agents Licensing Act;
- (c) a salesman registered under The Securities Act;
- (d) a salesman registered under The Investment Contracts Act;
- (e) an individual holding a certificate under section 486 of The Alberta Insurance Act,

or to their respective employers while acting in the capacity of their employer.

General Holidays and General Holiday Pay Exemptions

5 Part 3, Division 5 of the Act does not apply to an employee who is

- (a) a salesperson, other than a route salesperson, remunerated in whole or in part by commission, who is engaged in soliciting orders, principally outside the place of business of his employer, for goods or services or both, which will subsequently be delivered or provided to the purchaser;
- (b) an automobile, truck or bus salesperson;
- (c) a mobile home salesperson;
- (d) a farm machinery salesperson;
- (e) a heavy duty construction equipment or road construction equipment salesperson;
- (f) a real estate agent or real estate salesperson licensed under The Real Estate Agents Licensing Act;
- (g) a salesman registered under The Securities Act;
- (h) a salesman registered under The Investment Contracts Act;
- (i) an individual holding a certificate under section 486 of The Alberta Insurance Act,

or to their respective employers while acting in the capacity of their employer.

Schemes of Employment

6 The Director is authorized to approve a

scheme of employment between an employer and his employees notwithstanding section 14, and Division 2 of Part 3 of the Act or a regulation made under it.

Repeal of Regulations

7 Board of Industrial Relations Order No. 71 (1976) Governing Maternity Leave (Alta. Reg. 305/76) is repealed.

8 (1) Board of Industrial Relations Order No. 54 (1973) Governing Hours of Work and Minimum Wages (Alta. Reg. 278/73) is repealed.

(2) Board of Industrial Relations Order No. 55 (1973) Governing Hours of Work and Minimum Wages under The Chartered Accountants Act and The Legal Profession Act (Alta. Reg. 279/73) is repealed.

9 Board of Industrial Relations Order No. 59 (1973) Governing Hours of Work and Minimum Wages of Social Welfare Workers, Probation Officers, Dairy Inspectors, Sanitary Inspectors and Recreation Directors (Alta. Reg. 283/73) is repealed.

10 Board of Industrial Relations Order No. 12 (1975) Governing Hours of Work and Minimum Wages for Overtime of persons engaged in the Repair or Service of Motor Vehicles in Banff National Park, Jasper National Park and Waterton Lakes National Park (Alta. Reg. 149/75) is repealed.

11 (1) Board of Industrial Relations Order No. 11 (1973) Governing Hours of Work (Alta. Reg. 260/73) is repealed.

(2) Board of Industrial Relations Order No. 14 (1975) Governing Hours of Work of Transit Operators (Alta. Reg. 340/75) is repealed.

12 Board of Industrial Relations Order No. 61 (1975) Governing Notice of Termination of Employment (Alta. Reg. 53/76) is repealed.

13 (1) Board of Industrial Relations Order No. 13 (1973) Governing Days of Rest in the Oil Well Drilling Industry (Alta. Reg. 262/73) is repealed.

(2) Board of Industrial Relations Order No. 49 (1973) Governing Hours of Work and Minimum Wages in the Pipeline Construction Industry (Alta. Reg. 273/73) is repealed.

THE EMPLOYMENT STANDARDS ACT

Minimum Wage Regulation

Order in Council # 352/81

Regulation # 145/81

Approved and Ordered,

by F. LYNCH-STANTON,

Lieutenant Governor.

Upon the recommendation of the Honourable the Minister of Labour, the Lieutenant Governor in Council, pursuant to section 31 of The Employment Standards Act, makes the regulation in the attached Appendix, being the Minimum Wage Regulation.

Peter Lougheed
(Chairman)

1 In this regulation "minimum wage" means the minimum wage that an employer must pay an employee under section 2.

Minimum Wages

2 Every employer shall pay each of his employees a wage at a rate of at least

- (a) \$3.80 an hour to an employee 18 years or older;
- (b) \$3.65 an hour to an employee under 18 years old who is not attending school;
- (c) \$3.30 an hour to an employee under 18 years old who attends school and who is employed
 - (i) outside his normal daily school hours, and
 - (ii) between the opening and closing dates fixed for the school under section 139 of the School Act;
- (d) \$150.00 a week to an employee employed as
 - (i) a salesperson for a commercial agent licensed under the Licensing of Trades and Businesses Act;
 - (ii) a salesperson, other than a route salesperson, remunerated in whole or in part by commission, who is engaged in soliciting orders, principally outside the place of business of his employer for goods or services or both, which will subsequently be delivered or provided to the purchaser;
 - (iii) an automobile, truck or bus salesperson;
 - (iv) a mobile home salesperson;
 - (v) a farm machinery salesperson;
 - (vi) a heavy duty construction equipment or road construction equipment salesperson;
 - (vii) a residential home salesperson who is not a real estate agent licensed under The Real Estate Agents Licensing Act.

3 In determining whether the minimum wage has been paid to

- (a) an employee who is a piece worker, or
- (b) an employee who is paid in whole or in part on a commission basis or otherwise,

the calculation shall be based on the wages of the employee over the period of employment established by his employer for the computation of wages, or over a period not exceeding one month, whichever is the shorter period.

4 (1) Subject to subsections (3) and (4), if an employee is employed for less than 3 consecutive hours of work, the employer shall pay the employee for 3 hours of work at not less than the minimum wage to which the employee is entitled.

(2) For the purposes of subsection (1)

- (a) a meal period of one hour or less shall not be considered as being part of the three consecutive hours of work, and
- (b) hours of work immediately following the meal period referred to in clause (a) shall be counted as if they were hours of work following consecutively the hours of work before the meal period.

(3) If an employee is

- (a) employed in a recreation or athletic program on a part time basis by a city, town, new town, village, summer village, hamlet, county, municipal district or community service organization that is not operated for profit, or
- (b) employed as a school bus driver,

for less than 2 consecutive hours of work, the employer shall pay the employee for 2 hours of work at not less than the minimum wage to which the employee is entitled.

(4) If an employee under 18 years old who attends school and who is employed

- (a) outside his normal daily school hours and
- (b) between the opening and closing dates fixed for the school under section 139 of the School Act,

for less than 2 consecutive hours of work, the employer shall pay the employee for 2 hours of work at not less than the minimum wage to which the employee is entitled.

Deductions

5 (1) If board and lodging or either of them are furnished by an employer to an employee, the amount by which the wages of the employee may be reduced below the minimum wage to which the employee is entitled by way of a deduction from wages or a payment out of wages or both, shall not exceed

- (a) \$1.25 for a single meal, and
- (b) \$1.60 a day for lodging.

(2) Notwithstanding subsection (1) (a), an employer shall not make deductions from the minimum wage for a meal not consumed by an employee.

6 No employer shall reduce the wage of an

employee below the minimum wage to which the employee is entitled by making a deduction from or receiving payment out of wages for the furnishing, use, repair or laundering of any uniforms or special articles of wearing apparel that the employer requires the employee to wear during the employee's hours of work.

7 This regulation does not apply to employees and employers exempted from this regulation by virtue of the Exemption Regulation made under section 69 of the Act.

8 The Minimum Wage Regulation (Alta. Reg. 72/81) is repealed.

9 This regulation comes into force on May 1, 1981.

THE EMPLOYMENT STANDARDS ACT

Adolescents and Young Persons Employment Regulation

Order in Council # 170/81

Regulation # 82/81

Approved and Ordered,

by F. LYNCH-STAUTON,

Lieutenant Governor.

Upon the recommendation of the Honourable the Minister of Labour, the Lieutenant Governor in Council, pursuant to Sections 68 and 69 of The Employment Standards Act, makes the regulation in the attached Appendix, being the Adolescents and Young Persons Employment Regulation.

Peter Lougheed
(Chairman)

1 In this regulation

- (a) "adolescent" means an individual 12 years old or older but under 15 years old;
- (b) "young person" means an individual 15 years old or older but under 18 years old.

Adolescents

2 (1) Subject to this section, an adolescent may be employed as a

- (a) delivery person of small wares for a retail store,
- (b) clerk or messenger in an office,
- (c) clerk in a retail store, or
- (d) delivery person for the distribution of newspapers, flyers, or handbills,

if that employment is not or is not likely to be injurious to the life, health, education or welfare of the adolescent.

(2) No employer shall employ an adolescent unless a parent or guardian of the adolescent gives the prospective employer written consent to the employment.

(3) No employer shall employ an adolescent in any employment

- (a) for longer than 2 hours on a day during which the adolescent is required to attend school, or
- (b) for longer than 8 hours on a day during which the adolescent is not required to attend school.

(4) During the period of time from 9:00 p.m. to the following 6:00 a.m., no employer shall employ an adolescent and no adolescent shall work in any employment.

Young Persons

3 (1) During the period of time from 9:00 p.m. to the following 12:01 a.m., no employer shall employ a young person and no young person shall work in any employment or in connection with any of the following premises:

- (a) the premises of any retail business selling
 - (i) food or beverages (whether alcoholic or

not), or

- (ii) any other commodities, goods, wares or merchandise;

(b) the premises of a retail business in which gasoline, diesel fuel, propane or any other product of petroleum or natural gas is sold;

(c) the premises of an establishment, including a motel or hotel, with respect to which the proprietor or owner is required to hold a visitor's accommodation licence pursuant to the Visitor Accommodations Business Licensing Order under The Licensing of Trades and Businesses Act,

unless the young person works with and is in the continuous presence of at least one other individual 18 years old or older.

(2) During the period of time from 12:01 a.m. to the following 6:00 a.m., no employer shall employ a young person and no young person shall work in any employment on or in connection with any of the premises specified in subsection (1).

(3) With respect to the employment of young persons on premises not specified in subsection (1) during the period of time from 12:01 a.m. to the following 6:00 a.m., no employer shall employ a young person and no young person shall work in any employment unless:

- (a) a parent or guardian of the young person gives the prospective employer written consent to the employment, and
- (b) during his employment the young person works with and is in the continuous presence of at least one individual 18 years old or older.

4 The Director is authorized to approve occupations of a nature similar to those specified in section 2 (1) in which adolescents may be employed.

5 The Director is authorized to impose conditions on the employment of an adolescent or young person whenever he considers it necessary to do so.

6 The Adolescents and Young Persons Employment Regulations (Alta. Reg. 318/74) are repealed.

1. The purpose of any rule or regulation referred to in this section shall be to:

2. (1) To ensure the safety of the public and the health of the community and the environment and the welfare of the people of the State of New South Wales.

Young Persons

1. During the period of time from 10.00 a.m. to 12.00 p.m., no employer shall employ any person who is under the age of 15 years.

(2) For persons under 15 years of age, the employer shall ensure that the person is not employed in any of the following:

(a) The employer shall employ no person who is under the age of 15 years in any of the following:

(b) The employer shall employ no person who is under the age of 15 years in any of the following:

(c) The employer shall employ no person who is under the age of 15 years in any of the following:

(d) The employer shall employ no person who is under the age of 15 years in any of the following:

(e) The employer shall employ no person who is under the age of 15 years in any of the following:

(f) The employer shall employ no person who is under the age of 15 years in any of the following:

(g) The employer shall employ no person who is under the age of 15 years in any of the following:

(h) The employer shall employ no person who is under the age of 15 years in any of the following:

1. The purpose of any rule or regulation referred to in this section shall be to:

2. (1) To ensure the safety of the public and the health of the community and the welfare of the people of the State of New South Wales.

Young Persons

1. During the period of time from 10.00 a.m. to 12.00 p.m., no employer shall employ any person who is under the age of 15 years.

(2) For persons under 15 years of age, the employer shall ensure that the person is not employed in any of the following:

(a) The employer shall employ no person who is under the age of 15 years in any of the following:

(b) The employer shall employ no person who is under the age of 15 years in any of the following:

(c) The employer shall employ no person who is under the age of 15 years in any of the following:

(d) The employer shall employ no person who is under the age of 15 years in any of the following:

(e) The employer shall employ no person who is under the age of 15 years in any of the following:

(f) The employer shall employ no person who is under the age of 15 years in any of the following:

(g) The employer shall employ no person who is under the age of 15 years in any of the following:

(h) The employer shall employ no person who is under the age of 15 years in any of the following:

EXCERPTS FROM THE EMPLOYMENT STANDARDS ACT

The following excerpts are provided for your assistance. (NOTE: These excerpts may change without notice.) If further information is required, please refer to The Employment Standards Act or consult one of our Regional Offices.

EMPLOYMENT STANDARDS ACT

CHAPTER E-10.1

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

PART 1

INTERPRETATION, APPLICATION AND OPERATION

Definitions

- 1** (1) In this Act.
- (a) "collective agreement" has the same meaning that it has in the *Labour Relations Act*;
 - (b) "Director" means the individual appointed pursuant to the *Public Service Act* as the Director charged with the administration of this Act;
 - (c) "employee" means an individual employed to do work who is in receipt of or entitled to wages, and includes a former employee;
 - (d) "employer" means a person who employs an employee, and includes a former employer;
 - (e) "employment record" means the record required to be maintained under section 14 and any other document or record that is necessary in order to determine whether an employee is entitled to wages, overtime pay, entitlements or maternity benefits;
 - (f) "entitlements" means vacation pay, general holiday pay and pay in place of notice of termination of employment;
 - (g) "general holiday" means
 - (i) New Year's Day,
 - (ii) Good Friday,
 - (iii) Victoria Day,
 - (iv) Dominion Day,
 - (v) Labour Day,
 - (vi) Thanksgiving Day,
 - (vii) Remembrance Day,
 - (viii) Christmas Day, and
 - (ix) any other day designated as a general holiday by the Lieutenant Governor in Council under this Act;
 - (x) any other day designated by an employer in accordance with an agreement as a general holiday for his employees;
 - (h) "general holiday pay" means the general holiday pay payable to an employee under this Act;
 - (i) "hours of work" means the period of time during which an employee works for his employer;
 - (j) "maternity benefits" means the benefits to which an employee is entitled under Part 3, Division 7;
 - (k) "officer" means an individual appointed pursuant to the *Public Service Act* and designated by the Director as an officer for the purposes of this Act, and includes the Director;

- (l) "overtime agreement" means an agreement described in section 26;
- (m) "overtime pay" means a payment made or to be made in respect of those hours of work referred to and on the basis specified in section 21 or the regulations;
- (n) "overtime rate" means a rate of pay at not less than 1.5 times the wages of an employee;
- (o) "pay period" means the period of employment established by an employer for the computation of wages, overtime pay or time off in place of overtime pay;
- (p) "person" means an individual, corporation, partnership or a group of them or any combination of them;
- (q) "served" means served in accordance with section 8;
- (r) "umpire" means an individual appointed as an umpire under this Act;
- (s) "vacation pay" means vacation pay payable to an employee under this Act;
- (t) "wage" includes salary, pay, commission or remuneration for work, however computed, but does not include
 - (i) overtime pay,
 - (ii) entitlements,
 - (iii) a payment made as a gift or bonus that is dependent on the discretion of an employer and that is not related to hours of work, production or efficiency,
 - (iv) expenses or an allowance provided in place of expenses, or
 - (v) tips or other gratuities;
- (u) "week" means 7 consecutive days;
- (v) "work" includes providing a service.

14 (1) Subject to this Act, every employer shall maintain in each place of business operated by him in Alberta a record of the following particulars in respect of each of his employees employed at that place of business:

- (a) hours of work each day, recorded daily;
- (b) wages and overtime pay paid;
- (c) time off in place of overtime pay provided and taken;
- (d) name, address and date of birth;
- (e) date of commencement of the present term of employment;
- (f) wage rate, and date and particulars of each change to it;
- (g) each annual vacation granted, showing
 - (i) the dates of commencement and completion, and
 - (ii) the period of employment covered by the annual vacation;
- (h) amount of vacation pay paid;
- (i) general holiday pay paid and the date on which a general holiday is taken if it is not taken on the actual day of the general holiday;
- (j) amount of each deduction from the wages, overtime pay or entitlements of the employee and the purpose for which each deduction is made;
- (k) copies of overtime agreements, written requests to an employee to return to work after a temporary layoff and any notice of termination of employment;
- (l) amount of money paid in place of notice of termination of employment.

(2) Subsection (1)(a) does not apply to an employee employed entirely in

- (a) a supervisory capacity,
- (b) a managerial capacity, or
- (c) a capacity concerning matters of a confidential nature,

and whose duties do not, other than in an incidental way, consist of work similar to that performed by other employees who are not so employed.

Maintaining employment records

15(1) An employer may, with written consent of the Director, maintain employment records in whole or in part at his principle place of business in Alberta or at any other place that the Director may designate.

15(2) A consent under Section (1) is subject to any terms and conditions that the Director may prescribe.

Keeping employment records

16 Employment records shall be retained by an employer for at least 3 years from the date each record is made.

Statement of employment

17 (1) Every employer shall, at the end of each pay period, provide each of his employees with a statement in writing, for retention by that employee, setting out for that period and in respect of the employee the following information:

- (a) hours of work;
- (b) wage rate;
- (c) wages paid;
- (d) overtime pay paid;
- (e) time off in place of overtime pay provided and taken;
- (f) vacation pay paid;
- (g) general holiday pay paid;
- (h) money paid in place of notice of termination of employment;
- (i) amount of each deduction from the wages, overtime pay or entitlements of the employee and the purpose for which each deduction is made;
- (j) period of employment covered by the statement.

(2) An employer shall, on request, give to an employee a detailed statement as to the computation of the amount of wages, overtime pay and entitlements to which he is entitled and the method of computing any bonus or living allowance

paid, whether or not it forms part of wages.

(3) On the termination of employment of an employee, an employer shall, on request, give to the employee a written statement of the dates during which time the employee was employed by him.

Period for computing
wages and overtime pay

18 Wages and overtime pay or time off in place of overtime pay shall be computed by an employer over a period of employment that does not exceed one month or any longer period that the Director may approve.

Payment of wages

19 (1) Subject to subsection (2), within 10 days after the end of each pay period an employer shall pay to each employee the wages earned by the employee in the pay period.

(2) If the employment of an employee is terminated, whether by the employer or the employee, the employer shall pay the employee the wages to which the employee is entitled forthwith after the termination of employment.

Deductions

20 (1) Subject to subsection (2), no employer may set off against, deduct, claim or make a claim against or accept from the wages, overtime pay or entitlements of an employee any sum of money.

(2) An employer may deduct from the wages, overtime pay or entitlements of an employee a sum of money that is

- (a) permitted or required to be deducted by an Act or regulation or a judgment of a court, or
- (b) Subject to subsection 3, personally authorized in writing by the employee or authorized by a collective agreement that is binding on the employee to be deducted.

(3) No written authorization of an employee or authorization in a collective agreement permits an employer to deduct from the wages, overtime pay or entitlements of an employee as sum for

- (a) faulty workmanship, or
- (b) cash shortages or loss of property if an individual other than the employee has access to the cash or property.

Hours of work and overtime pay

21 (1) If in a week an employee completes 44 hours of work or less but on one or more of the days in the week he completes more than 8 hours of work,

- (a) the overtime rate shall be paid for those hours of work in excess of 8 in each day, or
- (b) in accordance with an overtime agreement, time off in place of overtime pay shall be provided and taken.

(2) If in a week an employee completes more than 44 hours of work, in accordance with an overtime agreement time off in place of overtime pay shall be provided and taken, or

- (a) the hours of work in excess of 8 in each day of the week shall be totalled, and

(b) the hours of work in excess of 44 in a week shall be calculated, and the overtime rate shall be paid for whichever is the greater number of hours under clause (a) or (b), or if they are the same, that common number of hours.

(3) The hours of work on a general holiday shall not be included in a computation of the number of hours of work in a day or in a week to determine whether an employee is entitled to overtime pay or time off in place of overtime pay.

Exempted employees

22 (1) Section 21 does not apply to an employee employed entirely in

- (a) a supervisory capacity,
- (b) a managerial capacity, or
- (c) a capacity concerning matters of a confidential nature,

and whose duties do not, other than in an incidental way, consist of work similar to that performed by other employees who are not so employed.

(2) An officer may make a determination as to whether an individual is or is not employed entirely in a supervisory capacity, in a managerial capacity or in a capacity concerning matters of a confidential nature.

(3) A copy of the determination made under subsection (2) shall be served on the employer and employee affected by it.

(4) An employer or employee affected by a determination made under this section may appeal to an umpire in accordance with section 93.

Payment of overtime pay

23 (1) Subject to subsection (2), if an employee is to be paid overtime pay an employer shall pay it within 10 days after the end of the pay period in which it is earned or any longer period that the Director may approve.

(2) If the employment of an employee is terminated, whether by the employer or the employee, the employer shall pay the employee the overtime pay to which the employee is entitled forthwith after the termination of employment.

Time off in place of overtime pay

24 (1) This section applies if an employer and employee agree that

- (a) the employer is to provide time off in place of overtime pay, and
- (b) the employee will take the time off provided by the employer in place of overtime pay.

(2) The time off in place of overtime pay provided by an employer and taken by an employee shall be provided and taken at a time that would, but for the time off, have been a time that the employee worked for his employer.

(3) The amount of time off in place of overtime pay provided by an employer and taken by an employee shall be at least equal to the number of hours of work for which the employee, but for the overtime agreement, would have received overtime pay.

(4) An employer shall pay his employee remuneration for the time taken off in place of overtime pay at the same rate that employee would have been paid his wages if he had worked those hours on a normal working day.

(5) For the purposes of this Act

- (a) time off in place of overtime pay provided by an employer and taken by an employee shall be treated as hours of work, and
- (b) remuneration paid to an employee in respect of the time off in place of overtime pay shall be treated as wages.

Taking time off in place of overtime pay

25 (1) Subject to subsection (2), if an employee is to receive time off in place of overtime pay the employer shall provide the time off and the employee shall take it

- (a) within 3 months of the end of the pay period in which it is earned,
- (b) in accordance with a collective agreement providing for a longer or shorter period for time off to be provided and taken, or
- (c) within any period longer than 3 months that may be approved by the Director or specified in the regulations.

(2) Subject to subsection (3), if time off in place of overtime pay is not provided and taken in accordance with subsection (1), the employer shall pay the employee overtime pay for the hours of work for which time off in place of overtime pay was to have been provided and taken within 10 days of the last date on which the time off should have been provided and taken under the agreement but was not taken.

(3) If the employment of an employee is terminated, whether by the employer or the employee, before time off in place of overtime pay is taken by the employee, the employer shall, forthwith after the termination of employment, pay the employee overtime pay for those hours of work in respect of which time off in place of overtime pay was to be provided and taken.

Overtime agreements

26 (1) An employer and an employee may

- (a) as part of a collective agreement, or
- (b) if there is no collective agreement, in a written agreement between the

employer and the employee,
agree that, wholly or partly in place of overtime pay, the employer will provide and the employee will take time off in place of overtime pay.

(2) An overtime agreement referred to in subsection (1) shall include provisions to the following effect:

- (a) that the time off in place of overtime pay shall be provided and taken at a time that would, but for the time off, have been a time that the employee worked for his employer,
- (b) that the amount of time off in place of overtime pay shall be at least equal to the number of hours of work for which the employee, but for the overtime agreement, would have received overtime pay,
- (c) that the employee shall be remunerated for the time taken off in place of overtime pay at the same rate that the employee would have been paid his wages if he had worked those hours on a normal working day,
- (d) that the time off in place of overtime pay shall be provided by the employer and taken by the employee within 3 months of the end of the pay period in which it is earned unless
 - (i) the agreement is part of a collective agreement and the collective agreement provides for a longer period of time within which time off shall be provided and taken,
 - (ii) the Director approves an agreement that provides for a longer period of time within which time off shall be provided and taken, or
 - (iii) a regulation provides for a longer period of time within which time off shall be provided and taken,
- (e) that if time off is not provided and taken in accordance with the agreement, the employee will be paid overtime pay for the hours of work for which time off in place of overtime pay was to have been provided and taken within 10 days of the date that was the last date that time off should have been provided and taken under the agreement but was not taken, and
- (f) that no amendment or termination of the agreement shall be effective without at least 2 weeks' notice in writing by one party to the other.

(3) If an agreement referred to in subsection (1) does not contain or is contrary to the provisions required to be contained under this section, the agreement shall be deemed to contain

- (a) those provisions of subsection (2) in respect of which it is silent, and
- (b) those provisions of subsection (2) that the agreement contravenes in substitution for the provisions that are contrary to subsection (2).

Extended hours of work

27 The hours of work of an employee shall be confined within a period of 12 hours in any one day unless

- (a) an accident occurs, urgent work is necessary to a plant or machinery, or other unforeseeable or unpreventable circumstances occur, in which case the hours of work shall be increased only to the extent necessary to avoid serious interference with the ordinary working of a business, undertaking or other activity,
- (b) the Director issues a permit authorizing extended hours of work, or
- (c) a regulation permits extended hours of work.

Hours of rest

28 An employer shall allow his employees at least

- (a) 24 consecutive hours of rest each week,
- (b) 48 consecutive hours of rest in each period of 14 consecutive days,
- (c) 72 consecutive hours of rest in each period of 21 consecutive days, or
- (d) 96 consecutive hours of rest in each period of 28 consecutive days.

Vacations and Vacation Pay

Definition

33 In this Division, "year of employment" means a period of 12 consecutive months from

- (a) the date on which the employee's employment actually commenced, or
- (b) if a common anniversary date is established by an employer for the purpose of determining the vacation and vacation pay of his employees or a group of them, that common anniversary date,

and each subsequent period of 12 consecutive months.

Vacation and vacation pay entitlement

34 (1) Subject to Section 35 and 39(1) an employer shall give to each of his employees after each year of employment of the employee, an annual vacation of at least 2 weeks with vacation pay calculated in accordance with subsection (2) and (3).

(2) The vacation pay payable for each week of vacation to an employee who is paid by the month is an amount equal to the wage of the employee for his normal hours of work in a month divided by $4 \frac{1}{3}$.

(3) The vacation pay payable for each 2 weeks of vacation to an employee who is paid other than by the month is an amount equal to 4% of the employee's wages for the year of employment with respect to which the vacation is given.

Proportionate reduction in vacation pay

35 If an employee does not work for his employer for all the days he would normally have been scheduled to work, the employer may reduce the employee's vacation and vacation pay proportionately, according to the number of days that the employee was expected to work but did not do so.

Prorated vacation entitlement

36 (1) If

- (a) an employee's year of employment is based on a common anniversary date, and

- (b) the employee commenced employment after that date in a year,

the employer shall give to that employee, after the next occurrence of the common anniversary date, an annual vacation in accordance with subsection (2) with vacation pay.

(2) The annual vacation of the employee shall be calculated on a pro rata basis bearing the same relationship to 2 weeks' vacation as the period of time elapsed between

- (a) the date the employee's employment commenced, and
- (b) the next occurrence of the common anniversary date,

bears to one year.

(3) The vacation pay payable under subsection (1) shall be calculated in accordance with section 34 (2) and reduced proportionately according to the length of vacation to which the employee is entitled under subsection (2).

Payment of vacation pay

37 (1) Subject to subsection (2), vacation pay shall be paid to an employee at least one day but not more than 2 weeks before the commencement of the employee's annual vacation.

(2) If the employment of an employee is terminated, whether by the employer or the employee, the employer shall pay the employee, forthwith after termination of employment, vacation pay calculated as follows:

- (a) in the case of an employee who has not become entitled to an annual vacation, an amount equal to 4% of his wages during his period of employment, or
- (b) if an employee has become entitled to an annual vacation, an amount equal to
 - (i) the vacation pay to which he would have been entitled in that year if he had remained employed by the employer, and

- (ii) 4% of his wages for the period from the date he was last entitled to an annual vacation to the date of termination of employment.

Annual vacation

38 (1) An employer shall grant the annual vacation to which an employee is entitled

- (a) in one unbroken period of 2 weeks, or
- (b) at the request of the employee, in 2 periods of one week each.

(2) An employee shall be granted his annual vacation with vacation pay not later than 12 months after the date on which he becomes entitled to the annual vacation.

**Notice by employer
re annual vacation**

39 If an employer and an employee cannot agree on the date of commencement of the employee's annual vacation, the employer shall give to the employee at least one week's notice of the date the employee's annual vacation shall commence.

39.1 If an agreement provides an employee with an annual vacation or vacation pay greater than that provided in this Division, the employer shall give his employee, after each year of employment of the employee, an annual vacation and vacation pay in accordance with that agreement.

**Vacation and vacation pay
regulations**

40 (1) The Lieutenant Governor in Council may make regulations

- (a) requiring an employer in an employment described or referred to in the regulations to pay an employee a sum of money as vacation pay in place of giving him an annual vacation with pay;
- (b) governing what constitutes a period of employment that will entitle an employee to an annual vacation with vacation pay or to a payment of a sum of money as vacation pay in place of an annual vacation with vacation pay;
- (c) governing what constitutes vacation pay, the method of computing it and the time at which it must be paid to an employee.

(2) A regulation made under this section applies notwithstanding anything in this Part to the contrary.

General Holidays and General Holiday Pay

Excerpt Section 1 General Holiday Pay

1(1) In this Act

- (g) "general holiday" means
 - (i) New Year's Day,
 - (ii) Good Friday,
 - (iii) Victoria Day,
 - (iv) Dominion Day,
 - (v) Labour Day,
 - (vi) Thanksgiving Day,
 - (vii) Remembrance Day,
 - (viii) Christmas Day,
 - (ix) any other day designated as a general holiday by the Lieutenant Governor in Council under this Act;
 - (x) any other day designated by an employer in accordance with an agreement as a general holiday for his employees;

Definitions

41 In this Division

- (a) "average daily wage" means
 - (i) the daily wage of an employee averaged over the employee's employment with an employer, or
 - (ii) the daily wage of an employee averaged over the 2 months of employment with an employer immediately preceding the week in which a general holiday occurs,whichever is the shorter period;
- (b) "daily wage" means the wage to which an employee would be entitled if the employee worked on a normal working day of the employer that is not a general holiday.

Application of Division

42 An employee is not entitled to general holiday pay if the employee

- (a) has worked for his employer for less than 30 days during the preceding 12 months,
- (b) does not work on a general holiday when he is required or scheduled to do so, or
- (c) is absent from his employment without the consent of his employer on the employee's last regular working day preceding, or the employee's first regular working day following, a general holiday.

43 If a general holiday falls on a day that would, but for the general holiday, have been a working day for an employee, and the employee does not work on that day, the employer shall pay the employee, for that day, general holiday pay that is at least equal to the average daily wage of the employee, or to any greater amount that the employee is entitled to by agreement.

General holiday pay entitlement

44 If a general holiday falls on a day that would, but for the general holiday, have been a working day for the employee, and the employee works on the general holiday, the employer shall

- (a) pay the employee general holiday pay
 - (i) for each hour of work of the employee on that day a sum that is at least equal to 1.5 times the hourly wage of the employee, and
 - (ii) a sum that is at least equal to the average daily wage of the employee,or
- (b) provide the employee
 - (i) for each hour of work of the employee on that day, with a sum that is at least equal to the hourly wage of the employee,

- (ii) with one day's holiday, not later than the next annual vacation of the employee, on a day that would, but for the holiday, be a working day for the employee, and
- (iii) in respect of the holiday referred to in subclause (ii), with general holiday pay of a sum that is at least equal to the average daily wage of the employee.

General holiday
on non-working day

45 If a general holiday falls on a day that is not normally a working day for an employee, but the employee is required or scheduled to work on the general holiday, the employer shall pay the employee, for each hour of work of the employee on that day, general holiday pay of a sum that is at least equal to 1.5 times the hourly wage of the employee.

General holiday during
annual vacation

46 If a general holiday falls within the annual vacation of an employee, the employer shall, if the general holiday is one to which the employee would have been entitled if he had not been on his annual vacation, give the employee

- (a) a holiday on what would have been the first day the employee would have worked after his annual vacation, or, by agreement with his employer on another day that the employee would have worked after his annual vacation and before his next annual vacation, and
- (b) general holiday pay of a sum that is at least equal to the average daily wage of the employee.

Prohibition re replacing
general holiday

47 If an employee does not work on a general holiday, his employer shall not require him to work on another day of that week that would otherwise be a day of rest for the employee unless he is paid his wages and overtime pay, if any, for that day of work in addition to other wages and overtime pay due to him.

Payment of general holiday pay

48 (1) Subject to section 49 and except for the general holiday pay referred to in section 44 (b) (iii), general holiday pay shall be paid within 10 days after the end of the pay period in which the general holiday occurs.

(2) Subject to section 49, if an employee is entitled to general holiday pay under section 44 (b) (iii), the employer shall pay the employee the general holiday pay within 10 days after the end of the pay period in which the holiday is provided.

Effect of termination
on general holiday pay

49 If the employment of an employee is terminated, whether by the employer or the employee, the employer shall pay the employee the general holiday pay to which the employee is entitled forthwith after the termination of employment.

General holiday pay regulations

50 (1) The Lieutenant Governor in Council may make regulations

- (a) requiring an employer in an employment described or referred to in the regulations to pay an employee a sum of money as general holiday pay in place of giving him a general holiday with general holiday pay;
- (b) governing the conditions on which an employee is entitled to general holiday pay under the regulations;
- (c) governing what constitutes general holiday pay, the method of computing it and the time at which it must be paid;
- (d) designating a day as a general holiday for the purpose of this Act.

(2) A regulation made under this section applies notwithstanding anything in this Part to the contrary.

Termination of Employment

Definitions

51 In this Division

- (a) "notice of termination" means a written notice of termination of employment given by an employer to an employee in accordance with section 53;
- (b) "temporary layoff" means
 - (i) a layoff of less than 60 days, or
 - (ii) a layoff of 60 days or more if during the period of layoff
 - (A) the employee laid off receives wages or payment in place of wages in an amount agreed to by the employer and employee, or
 - (B) the employer makes payments for the benefit of the employee laid off pursuant to a pension or employee insurance plan or the like.

Separate periods of employment
deemed one period

52 For the purpose of this Division, when an employee has been employed by the same employer more than once, those periods of employment shall be considered to be one period of employment if not more than 3 months has elapsed between each period of employment.

Termination of employment

53 (1) Subject to section 54, no employer may terminate the employment of an employee unless he gives the employee

- (a) notice of termination in accordance with subsection (2), or
- (b) a sum of money in place of notice of termination in accordance with subsection (3).

(2) If an employer wishes to terminate the employment of an employee by written notice, the employer shall give the employee written notice of termination of employment of at least

- (a) 7 days, if the employee has been employed by the employer for more than 3 months but less than 2 years, or
- (b) 14 days, if the employee has been employed by the employer for 2 years or more,

indicating on the notice the date it is issued.

(3) If an employer wishes to terminate the employment of an employee by giving the employee a sum of money in place of notice of termination, the employer shall pay the employee the following:

- (a) if the employee has been employed by the employer for more than 3 months but less than 2 years, a sum of money that is at least equal to the wages the employee would have earned if the employee had worked during his regular hours of work in a week, or
- (b) if the employee has been employed by the employer for 2 years or more, a sum of money that is at least equal to the wages the employee would have earned if the employee had worked during his regular hours of work in a 14 day period.

(4) If the wages of an employee vary from one week to another or one 14 day period to another, as the case may be, the average of the employee's wages for the 3 month period that the employee worked immediately preceding the date of termination of employment shall be used in determining the sum to be paid to an employee pursuant to subsection (3).

No notice of termination
required

54 No notice of termination of employment or payment of money in place of notice of termination is required to be given or paid by an employer under this Act to terminate the employment of an employee if

- (a) the employee has been employed by his employer for 3 months or less;
- (b) the employee is employed at the site of and in the construction, erection, repair, remodelling, alteration, painting, interior decoration or

demolition of any

- (i) building or structure;
- (ii) road, highway, railway or airfield;
- (iii) sidewalk, curb or gutter;
- (iv) pipeline;
- (v) irrigation or drainage system;
- (vi) earth and rock fill dam;
- (vii) sewage system;
- (viii) power transmission line or power distribution system;
- (ix) gas distribution system;

other than as an office employee employed at the site;

- (c) the employee is employed for a definite term or task for a period not exceeding 12 months on completion of which the employment terminates;
- (d) the employee is temporarily laid off;
- (e) the employee's employment is terminated for just cause;
- (f) the employee is laid off after refusing an offer by the employer of reasonable alternative work;
- (g) the employee refuses work made available through a seniority system;
- (h) the employee is not provided with work by his employer by reason of a strike or lockout occurring at the employee's place of employment;
- (i) the employee on temporary layoff does not return to work within 7 days after being requested to do so in writing by his employer;
- (j) the employee is employed under an agreement by which the employee may elect to either work or not work for a temporary period when requested to do so by his employer;
- (k) it is the custom or practice of an employer that his employees terminate their employment by retirement on attaining a particular age, and the employee reaches that age;
- (l) a contract of employment is or has become impossible for the employer to perform by reason of unforeseeable or unpreventable causes beyond the control of the employer;
- (m) the employee is employed on a seasonal basis;
- (n) the employee is employed in the cutting, removal, burning or other disposal of trees and brush or either of them for the primary purpose of clearing land and not for the harvesting of timber on it.

Prohibition re benefits
on notice of termination

55 When a notice of termination is given, the employer

- (a) shall not reduce the wages, rate of wages or alter any term or condition of employment of the employee to whom the notice is given, and
- (b) shall, between the time that notice of termination is issued and the date of termination of employment, pay wages to the employee to whom the notice is given at not less than the wages to which he would have been entitled if the employee had worked his regular hours of work in that week whether or not work is required to be performed.

Continuation of employment
after termination

56 Notice of termination is void and of no effect if an employee continues to be employed by his employer after the date specified for termination of employment.

Money in place of notice
of termination

57 (1) If an employee is to be given a sum of money in place of termination, the employer shall pay that sum to the employee forthwith after the termination of employment.

(2) When a laid off employee ceases to be on temporary layoff, the employment of the employee shall be deemed to have been terminated on the last day of temporary layoff and the employer shall pay to the employee a sum of money in place of notice of termination forthwith after the date that the employee ceases to be on temporary layoff.

Maternity Benefits

Definitions

58 In this Division,

- (a) "date of delivery" means the date when the pregnancy of an employee terminates with the birth of a child or the pregnancy otherwise terminates;
- (b) "medical certificate" includes a written statement for the purpose of this Division containing the signature of a physician.

Entitlement to maternity leave

59 (1) A pregnant employee who has been employed by an employer for a period of at least 12 months is entitled to maternity leave without pay.

(2) A pregnant employee referred to in subsection (1) is entitled to maternity leave of

- (a) a period not exceeding 12 weeks immediately preceding the estimated date of delivery or any shorter period the employee may request,
- (b) the period, if any, between the estimated date of delivery and the actual date of delivery, and
- (c) a period not exceeding 6 weeks immediately following the actual date of delivery.

Notice to commence maternity leave

60 (1) A pregnant employee shall give her employer at least 2 weeks' notice in writing of the day on which she intends to commence maternity leave together with a medical certificate certifying that she is pregnant and giving the estimated date of delivery.

(2) A pregnant employee is entitled to commence maternity leave referred to in section 59 on the expiration of the 2 weeks' notice given under subsection (1).

Shortening maternity leave

61 An employee, with the agreement of her employer, may shorten the duration of the 6 week period following the actual date of delivery by providing her employer with a medical certificate indicating that resumption of work by the employee will not endanger her health.

No notice of maternity leave

62 An employee who fails to comply with section 60 and who is otherwise entitled to maternity leave is entitled to maternity leave for any of the period specified in section 59 (2), if within 2 weeks after she ceases to work she provides her employer with a medical certificate

- (a) indicating that she is not able to work by reason of a medical condition arising from her pregnancy, and
- (b) giving the estimated date of delivery or the actual date of delivery.

Extended maternity leave

63 When an employee takes maternity leave under this Division and is unable to return to work after the expiration of the 6 week period following the actual date of delivery by reason of a medical condition arising following the date of delivery, her employer shall grant her a further period of maternity leave without pay of not more than 3 weeks if she provides her employer with a medical certificate indicating that due to a medical condition arising following the date of delivery she is not able to return to work at that time.

Prohibition against termination of employment

64 No employer shall terminate the employment of or lay off an employee who

- (a) is entitled to maternity leave under section 59 (1), or
- (b) has commenced maternity leave under this Division,

by reason only that the employee is pregnant or that maternity leave has been or will be taken.

Notice of resumption of employment

65 (1) An employee who wishes to resume her employment on the expiration of maternity leave to which she is entitled shall give her employer 2 weeks' notice in writing of the day on which she intends to resume employment and her employer shall

(a) reinstate her in the position she occupied at the time her maternity leave commenced, or

(b) provide her with alternative work of a comparable nature,

at not less than the same wages and other benefits that had accrued to her to the date that she commenced maternity leave.

(2) No employer is required to allow an employee to whom maternity leave has been granted under this Division to resume her employment with the employer after the date of delivery until after the expiration of 2 weeks from the date on which the employee notifies the employer of her intention to resume employment.

Suspension of operations

66 (1) If an employer has suspended or discontinued his business, undertaking or other activity wholly or partly during the period of an employee's maternity leave and the employer has not resumed operations on the expiration of the employee's maternity leave, the employer shall, on resumption of the business, undertaking or other activity

(a) reinstate the employee in the position she occupied at the time her maternity leave commenced at not less than the same wages and other benefits that had accrued to her to the date that she commenced maternity leave, or

(b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's maternity leave commenced, with no loss of seniority or other benefits accrued to the employee to the date that the employee commenced maternity leave.

(2) The requirement for an employer to reinstate or provide an employee with alternative work under subsection (1) extends for a period of 12 months from the date of expiration of the employee's maternity leave.

Notice to commence maternity leave

67 If during the period referred to in section 59 (2) (a) the pregnancy of an employee interferes with the performance of the employee's duties the employer may, by notice in writing to the employee, require the employee to commence maternity leave under this Division.

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